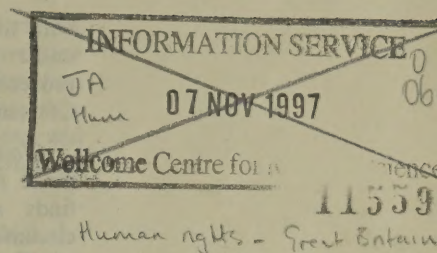


Human Rights Bill [H.L.]



EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill gives further effect in domestic law to rights and freedoms guaranteed under the European Convention on Human Rights, and makes provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights.

Clause 1 specifies those Articles of the Convention and the First Protocol to it ("the Convention rights") which are given further effect by the Bill (subject to any designated derogation or reservation, to which *clauses 14* and *15* refer). These Articles are set out in *Schedule 1*. *Clause 1* also provides that the clause and *Schedule 1* may be amended by order to reflect the effect of a protocol to the Convention which the United Kingdom has ratified, or signed with a view to ratification.

Clause 2 provides that a court or tribunal determining a question in connection with a Convention right must take account of relevant judgments, decisions, declarations and opinions made or given by the European Commission and Court of Human Rights and the Committee of Ministers of the Council of Europe.

Clause 3 provides that primary and subordinate legislation, whenever enacted, must as far as possible be read and given effect in a way which is compatible with the Convention rights. It also provides that this does not affect the validity, continuing operation or enforcement of any incompatible primary legislation, or any incompatible subordinate legislation if primary legislation prevents the removal of the incompatibility.

Clause 4 provides that specified courts may make a "declaration of incompatibility" where they are satisfied that a provision of primary legislation is incompatible with the Convention rights, or that a provision of subordinate legislation is incompatible and the primary legislation under which it was made prevents the removal of that incompatibility. It also provides that such a declaration does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given.

Clause 5 gives the Crown the right to have notice that a court is considering whether or not to make a declaration of incompatibility, and entitles the Crown to be joined as a party to the proceedings.

Clause 6 makes it unlawful for a public authority to act in a way which is incompatible with the Convention rights, unless that would be inconsistent with the effect of primary legislation. It also makes provision as to public bodies which are to be regarded as a "public authority" for the purposes of the Bill.

Clause 7 provides that a person who claims that a public authority has acted (or proposes to act) in a way which is unlawful, because incompatible

with the Convention rights, may bring proceedings against that authority under the Bill, or may rely on the Convention rights in any legal proceedings. Such a person may only bring proceedings or rely on the Convention rights if he is (or would be) a victim of the unlawful act.

Clause 8 provides that a court or tribunal may grant such relief or remedy, or make such order, within its jurisdiction as it considers appropriate where it finds an authority to have acted unlawfully. It also specifies the circumstances in which an award of damages may be made.

Clause 9 provides that proceedings against a court or tribunal under *clause 7* may be brought only by way of appeal or on an application for judicial review and that damages may not be awarded in proceedings under the Bill in relation to an act of a court or tribunal, and preserves judicial immunity.

Clause 10 enables the amendment by order of a provision of legislation which has been declared incompatible with the Convention rights or which, in view of a finding of the European Court of Human Rights, appears to a Minister of the Crown to be incompatible, so as to remove the incompatibility or possible incompatibility.

Clause 11 makes further provision with respect to such a remedial order and also provides that no person shall be guilty of an offence solely as a result of any retrospective effect of such an order.

Clause 12 provides that a remedial order is to be subject to the affirmative resolution procedure, and that, except in urgent cases, the order must be approved in draft. Where not approved in draft before it is made, it ceases to have effect if not approved by Parliament within 40 sitting days of it having been made.

Clause 13 provides that a person may rely on a Convention right without prejudice to any other right or freedom conferred on him, and that *clauses 7 to 9* do not affect the right of any person to make any claim or bring any proceedings which he could make or bring apart from those clauses.

Clause 14 makes provision in respect of a "designated derogation", which it defines as the United Kingdom's derogation from Article 5(3) of the Convention (the text of which is set out in Part I of *Schedule 2*) and any other derogation from an Article of the Convention or of any protocol to the Convention, which is designated by order. It also provides for the amendment of *Schedule 2* to reflect the addition or removal of designated derogations.

Clause 15 makes provision in respect of a "designated reservation", which it defines as the United Kingdom's reservation to Article 2 of the first Protocol to the Convention (the text of which is set out in Part II of *Schedule 2*), and any other reservation to an Article which is designated by order. It also provides for the amendment of *Schedule 2* to reflect the addition or removal of designated reservations.

Clause 16 provides that a designated derogation will, if not withdrawn before then, cease to have effect for the purposes of the Bill five years after *clause 1(2)* comes into force unless extended by order for a further five years before the end of that period. *Clause 16* also provides that such an order is to be subject to the affirmative resolution procedure.

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Clause 17 provides that the appropriate Minister must review the designated reservation to Article 2 of the First Protocol to the Convention within five years of *clause 1(2)* coming into force, and any other reservation within five years of its designation; requires the Minister to lay a copy of a report on the result of any such review before each House of Parliament; and provides for further periodic reviews of the designated reservation while the designation is still in force.

Clause 18 provides that a holder of one of the judicial offices to which the clause applies may become a judge of the European Court of Human Rights without being required to relinquish his office, and that he is not required to perform the duties of his judicial office while he is a judge of the Court.

Clause 19 provides that the Minister in charge of a Bill in either House of Parliament must make and publish a written statement to the effect either that in his view the provisions of the Bill are compatible with the Convention rights, or that although he is unable to make such a statement, the government nevertheless wishes the House to proceed with the Bill.

Clause 20 makes provision in respect of the making of orders under the Bill.

Clause 21 defines various terms used in the Bill, and explains how references to Articles of the Convention and the European Court of Human Rights are to be read before and after the coming into force of the 11th Protocol to the Convention.

Clause 22 makes provision about commencement and extent of the Bill. It also provides that the Bill binds the Crown.

Financial effects of the Bill

Although public authorities should already be seeking to comply with the Convention, the Bill could result in increased costs for them. The prohibition in *clause 6* on acts by public authorities which are incompatible with the Convention rights could result in their amending their procedures in response to successful challenges to those acts, or in anticipation of challenges, and this may give rise to costs.

Public authorities will be liable under *clause 8* to pay damages awarded by the courts in respect of acts which are incompatible with the Convention rights. In deciding whether to make such an award and in calculating the amount, however, the courts will be required under *clause 8* to take into account the principles applied by the European Court of Human Rights in relation to its own awards of compensation. Such awards tend to range from £5,000 to £15,000 and are not made simply because the Court finds a violation of the Convention.

Clause 6 will have the effect of applying the Bill to a wide range of public authorities of different kinds. It is impossible to calculate what the overall financial effects of the Bill will be for them, or the effect for particular public authorities, or to be sure that any amendments to their procedures would not have been made in any case regardless of the provisions of the Bill (for example, as a result of other domestic policy decisions).

Additional public expenditure on the courts and the legal aid budget is likely to arise from *clause 7* which enables Convention points to be raised in

domestic proceedings involving a public authority, or to be the basis for proceedings against a public authority. Although it will be possible to raise Convention points (to the extent that they are relevant) in proceedings before any court or tribunal, the impact is likely to be greatest in relation to criminal proceedings, and on appeal, and in relation to applications for judicial review. It is also likely that the impact will be greater initially than in later years, when the courts will have become accustomed to dealing with Convention points and precedents will have been set.

International experiences of the implementation of human rights legislation provide some insights into how additional workload might accrue to the courts and what the areas of potential challenge might be, but there is no domestic precedent from which an analogy might be drawn. The Government is considering those experiences and the advice of the judiciary and practitioners from the United Kingdom and abroad in assessing how the provisions of the Bill are likely to affect the court system in practice. At present, however, there is no basis on which to estimate the additional costs to the courts and legal aid budget with any precision.

There will be an initial cost in training judges, magistrates and tribunal members to handle Convention points. This is estimated to cost up to £4.5m in England and Wales.

The other provisions of the Bill have no significant financial effects.

Any costs arising as a result of the Bill will be contained within the Government's planned overall spending totals.

Effect of the Bill on public service manpower

In so far as its provisions result in increased business for the courts, the Bill may result in an increase in posts in the courts.

Business compliance cost assessment

It is not possible to assess the impact of the Bill on businesses, charities or voluntary organisations, but since its direct application is limited to public authorities, its impact on these kinds of organisation is unlikely to be significant.

Human Rights Bill [H.L.]

ARRANGEMENT OF CLAUSES

Introduction

Clause

1. The Convention and the First Protocol.
2. Interpretation of Convention rights.

Interpretation of legislation

3. Legislation.
4. Declaration of incompatibility.
5. Right of Crown to intervene.

Public authorities

6. Acts of public authorities.
7. Proceedings.
8. Judicial remedies.
9. Acts of courts and tribunals.

Remedial action

10. Power to take remedial action.
11. Remedial orders.
12. Procedure.

Other rights and proceedings

13. Other rights and proceedings.

Derogations and reservations

14. Derogations.
15. Reservations.
16. Period for which designated derogations have effect.
17. Periodic review of designated reservations.

Judges of the European Court of Human Rights

18. Appointment to European Court of Human Rights.

Parliamentary procedure

Clause

- 19. Statements of compatibility.

Supplemental

- 20. Orders under this Act.
- 21. Interpretation, etc.
- 22. Short title, commencement, application and extent.

SCHEDULES:

Schedule 1 —The Articles.

Part I—The Convention.

Part II—The First Protocol.

Schedule 2 —Reservation and Derogation.

Part I—Derogation.

Part II—Reservation.

A

B I L L

INTITULED

An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.

A.D. 1997.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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Introduction

1.—(1) In this Act, “the Convention rights” means the rights and fundamental freedoms set out in—

The Convention and the First Protocol.

- (a) Articles 2 to 12 and 14 of the Convention, and
- (b) Articles 1 to 3 of the First Protocol,

10 as read with Articles 16 to 18 of the Convention.

(2) Those Articles are to have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 14 and 15).

(3) The Articles are set out in Schedule 1.

15 (4) The Secretary of State may by order make such amendments to this section or Schedule 1 as he considers appropriate to reflect the effect, in relation to the United Kingdom, of a protocol.

(5) In subsection (4) “protocol” means a protocol to the Convention—

- (a) which the United Kingdom has ratified; or
- 20 (b) which the United Kingdom has signed with a view to ratification.

(6) No amendment may be made by an order under subsection (4) so as to come into force before the protocol concerned is in force in relation to the United Kingdom.

Interpretation of
Convention rights.

- 2.—(1) A court or tribunal determining a question which has arisen under this Act in connection with a Convention right must take into account any—
- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
 - (b) opinion of the Commission given in a report adopted under Article 31 of the Convention,
 - (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or
 - (d) decision of the Committee of Ministers taken under Article 46 of the Convention,
- whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.
- (2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.
- (3) In this section “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—
- (a) by the Lord Advocate or the Secretary of State, in relation to proceedings in Scotland; or
 - (b) by the Lord Chancellor or Secretary of State, in relation to any other proceedings.

Interpretation of legislation

Legislation.

- 3.—(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
- (2) This section—
- (a) applies to primary legislation and subordinate legislation whenever enacted;
 - (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
 - (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

Declaration of
incompatibility.

- 4.—(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with one or more of the Convention rights.
- (2) If the court is satisfied that the provision is incompatible with one or more of the Convention rights, it may make a declaration of that incompatibility.
- (3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with one or more of the Convention rights.

(4) If the court is satisfied—

(a) that the provision is incompatible with one or more of the Convention rights, and

5 (b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility,

it may make a declaration of that incompatibility.

(5) In this section “court” means—

(a) the House of Lords;

(b) the Judicial Committee of the Privy Council;

10 (c) the Courts-Martial Appeal Court;

(d) in Scotland, the High Court of Justiciary sitting as a court of criminal appeal or the Court of Session;

(e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal.

15 (6) A declaration under this section (“a declaration of incompatibility”)—

(a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and

(b) is not binding on the parties to the proceedings in which it is made.

20 **5.—**(1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court.

Right of Crown to intervene.

(2) In any case to which subsection (1) applies—

(a) a Minister of the Crown, or

(b) a person nominated by a Minister of the Crown,

25 is entitled, on an application made to the court in accordance with rules of court, to be joined as a party to the proceedings.

(3) An application under subsection (2) may be made at any time during the proceedings.

30 (4) A person who has been made a party to criminal proceedings (other than in Scotland) as the result of an application under this section may, with leave, appeal to the House of Lords against any declaration of incompatibility made in the proceedings.

(5) In subsection (4)-

35 “leave” means leave granted by the court making the declaration of incompatibility or by the House of Lords; and

“criminal proceedings” includes all proceedings before the Courts-Martial Appeal Court.

Public authorities

40 **6.—**(1) It is unlawful for a public authority to act in a way which is incompatible with one or more of the Convention rights.

Acts of public authorities.

(2) Subsection (1) does not apply to an act if—

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

(3) In this section, “public authority” includes— 5

(a) a court,

(b) a tribunal which exercises functions in relation to legal proceedings, and

(c) any person certain of whose functions are functions of a public nature, 10

but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

(4) In subsection (3) “Parliament” does not include the House of Lords in its judicial capacity.

(5) In relation to a particular act, a person is not a public authority by 15 virtue only of subsection (3)(c) if the nature of the act is private.

(6) “An act” includes a failure to act but does not include a failure to—

(a) introduce in, or lay before, Parliament a proposal for legislation; or

(b) make any primary legislation or remedial order.

Proceedings. 7.—(1) A person who claims that a public authority has acted (or proposes to 20 act) in a way which is made unlawful by section 6(1) may—

(a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or

(b) rely on the Convention right or rights concerned in any legal proceedings, 25

but only if he is (or would be) a victim of the unlawful act.

(2) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority includes a counterclaim or similar proceeding.

(3) If the proceedings are brought on an application for judicial review, 30 the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.

(4) If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of the 35 unlawful act.

(5) In subsection (1)(b) “legal proceedings” includes—

(a) proceedings brought by or at the instigation of a public authority; and

(b) an appeal against the decision of a court or tribunal. 40

(6) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.

(7) Nothing in this Act creates a criminal offence.

(8) In this section “rules” means—

(a) in relation to proceedings before a court in Scotland, rules made by the Secretary of State for the purposes of this section,

5 (b) in relation to proceedings before a tribunal in Scotland, rules made by the Lord Advocate or the Secretary of State for those purposes,

(c) in relation to proceedings before any other court or tribunal, rules made by the Secretary of State or the Lord Chancellor for those purposes or rules of court,

10 and includes provision made by order under section 1 of the Courts and Legal Services Act 1990. 1990 c. 41.

(9) In making rules regard must be had to section 9.

8.—(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its jurisdiction as it considers just and appropriate. Judicial remedies.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and

(b) the consequences of any decision (of that or any other court) in respect of that act,

25 the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

(a) whether to award damages, or

(b) the amount of an award,

30 the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) In this section—

“court” includes a tribunal;

35 “damages” means damages for an unlawful act of a public authority; and

“unlawful” means unlawful under section 6(1).

9.—(1) Proceedings under section 7(1)(a) in respect of any act of a court may be brought only by way of an appeal against the decision, or on an application (in Scotland a petition) for judicial review. Acts of courts and tribunals.

40 (2) That does not affect any rule of law which prevents a court from being the subject of judicial review.

(3) Damages may not be awarded in proceedings under this Act in respect of any act of a court.

- (4) Nothing in this Act makes a person personally liable in relation to—
 (a) the exercise (or purported exercise) of the jurisdiction of a court, or
 (b) the administration of a court.

(5) In this section—

“act” includes a failure to act; and

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“court” includes a tribunal, a justice of the peace, a justice’s clerk and (in Northern Ireland) a clerk of petty session.

Remedial action

Power to take remedial action.

10.—(1) This section applies if—

- (a) a provision of legislation has been declared under section 4 to be incompatible with one or more of the Convention rights; or
 (b) it appears to a Minister of the Crown or Her Majesty in Council that, having regard to a finding of the European Court of Human Rights, a provision of legislation is incompatible with one or more of the obligations of the United Kingdom arising from the Convention.

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(2) If a Minister of the Crown considers that, in order to remove the incompatibility, it is appropriate to amend the legislation using the power conferred by this subsection, he may by order make such amendments to it as he considers appropriate.

(3) If the legislation is an Order in Council, the power conferred by this subsection (2) is exercisable by Her Majesty in Council.

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(4) If, in the case of subordinate legislation, a Minister of the Crown considers—

- (a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and
 (b) that it is appropriate to do so using the power conferred by this subsection,

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he may by order make such amendments to the primary legislation as he considers appropriate.

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(5) In this section “amendments” includes repeals and the application of provisions subject to modifications.

Remedial orders.

11.—(1) An order made under section 10 (a “remedial order”) may—

- (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate;
 (b) be made so as to have effect from a date earlier than that on which it is made;
 (c) make provision for the delegation of specific functions; and
 (d) make different provision for different cases.

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(2) The power conferred by subsection (1)(a) includes—

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- (a) power to amend or repeal primary legislation (including primary legislation other than that which contains the incompatible provision); and

(b) power to amend or revoke subordinate legislation (including subordinate legislation other than that which contains the incompatible provision).

(3) No person is to be guilty of an offence solely as a result of the retrospective effect of a remedial order.

12.—(1) No remedial order may be made unless—

Procedure.

(a) a draft of the order has been approved by resolution of each House of Parliament; or

(b) it is declared in the order that it appears to the Minister making it, or Her Majesty in Council, that because of the urgency of the matter it is necessary to make the order without a draft being so approved.

(2) If a remedial order is made without being approved in draft—

(a) the order must be laid before Parliament after it is made; and

(b) if at the end of the period for consideration a resolution has not been passed by each House approving the order, the order ceases to have effect (but without that affecting anything previously done under the order or the power to make a fresh remedial order).

(3) In subsection (2) “period for consideration” means the period of forty days beginning with the day on which the order was made.

(4) In calculating the period for consideration, no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued; or

(b) both Houses are adjourned for more than four days.

Other rights and proceedings

13.—(1) A person may rely on a Convention right without prejudice to any other right or freedom conferred on him by or under any law having effect in any part of the United Kingdom.

Other rights and proceedings.

(2) Sections 7 to 9 do not affect the right of any person to make any claim or bring any proceedings which he could make or bring apart from those sections.

Derogations and reservations

14.—(1) In this Act, “designated derogation” means—

Derogations.

(a) the United Kingdom’s derogation from Article 5(3) of the Convention; and

(b) any derogation by the United Kingdom from an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Secretary of State.

(2) The derogation referred to in subsection (1)(a) is set out in Part I of Schedule 2.

(3) If a designated derogation is amended or replaced it ceases to be a designated derogation.

(4) But subsection (3) does not prevent the Secretary of State from exercising his power under subsection (1)(b) to make a fresh designation order in respect of the Article concerned.

(5) The Secretary of State must by order make such amendments to Schedule 2 as he considers appropriate to reflect—

- (a) any order made under subsection (1)(b); or
- (b) the effect of subsection (3).

(6) A designation order may be made in anticipation of the making by the United Kingdom of a proposed derogation.

Reservations.

15.—(1) In this Act, “designated reservation” means—

- (a) the United Kingdom’s reservation to Article 2 of the First Protocol to the Convention; and
- (b) any other reservation by the United Kingdom to an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Secretary of State.

(2) The text of the reservation referred to in subsection (1)(a) is set out in Part II of Schedule 2.

(3) If a designated reservation is withdrawn wholly or in part it ceases to be a designated reservation.

(4) But subsection (3) does not prevent the Secretary of State from exercising his power under subsection (1)(b) to make a fresh designation order in respect of the Article concerned.

(5) The Secretary of State must by order make such amendments to Schedule 2 as he considers appropriate to reflect—

- (a) any order made under subsection (1)(b); or
- (b) the effect of subsection (3).

Period for which designated derogations have effect.

16.—(1) If it has not already been withdrawn by the United Kingdom, a designated derogation ceases to have effect for the purposes of this Act—

- (a) in the case of the derogation referred to in section 14(1)(a), at the end of the period of five years beginning with the date on which section 1(2) came into force;
- (b) in the case of any other derogation, at the end of the period of five years beginning with the date on which the order designating it was made.

(2) At any time before the period—

- (a) fixed by subsection (1)(a) or (b), or
- (b) extended by an order under this subsection,

comes to an end, the Secretary of State may by order extend it by a further period of five years.

(3) An order under section 14(1)(b) ceases to have effect at the end of the period for consideration, unless a resolution has been passed by each House approving the order.

(4) Subsection (3) does not affect—

- (a) anything done in reliance on the order; or
- (b) the power to make a fresh order under section 14(1)(b).

5 (5) In subsection (3) “period for consideration” means the period of forty days beginning with the day on which the order was made.

(6) In calculating the period for consideration, no account is to be taken of any time during which—

- (a) Parliament is dissolved or prorogued; or
- (b) both Houses are adjourned for more than four days.

10 (7) If a designated derogation is withdrawn by the United Kingdom, the Secretary of State must by order make such amendments to this Act as he considers are required to reflect that withdrawal.

17.—(1) The appropriate Minister must review the designated reservation referred to in section 15(1)(a)—

Periodic review of designated reservations.

- 15 (a) before the end of the period of five years beginning with the date on which section 1(2) came into force; and
- (b) if that designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).

20 (2) The appropriate Minister must review each of the other designated reservations (if any)—

- (a) before the end of the period of five years beginning with the date on which the order designating the reservation first came into force; and
- 25 (b) if the designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).

30 (3) The Minister conducting a review under this section must prepare a report on the result of the review and lay a copy of it before each House of Parliament.

Judges of the European Court of Human Rights

18.—(1) In this section “judicial office” means the office of—

Appointment to European Court of Human Rights.

- 35 (a) Lord Justice of Appeal, Justice of the High Court or Circuit judge, in England and Wales;
- (b) judge of the Court of Session or sheriff, in Scotland;
- (c) Lord Justice of Appeal, judge of the High Court or county court judge, in Northern Ireland.

40 (2) The holder of a judicial office may become a judge of the European Court of Human Rights (“the Court”) without being required to relinquish his office.

(3) But he is not required to perform the duties of his judicial office while he is a judge of the Court.

(4) In respect of any period during which he is a judge of the Court—

- 1981 c. 54. (a) a Lord Justice of Appeal or Justice of the High Court is not to count as a judge of the relevant court for the purposes of section 2(1) or 4(1) of the Supreme Court Act 1981 (maximum number of judges) nor as a judge of the Supreme Court for the purposes of section 12 of that Act (salaries etc.); 5
- 1988 c. 36.
1973 c. 15. (b) a judge of the Court of Session is not to count as a judge of that court for the purposes of section 1(1) of the Court of Session Act 1988 (maximum number of judges) or of section 9(1)(c) of the Administration of Justice Act 1973 (“the 1973 Act”) (salaries etc.); 10
- 1978 c. 23. (c) a Lord Justice of Appeal or a judge of the High Court in Northern Ireland is not to count as a judge of the relevant court for the purposes of section 2(1) or 3(1) of the Judicature (Northern Ireland) Act 1978 (maximum number of judges) nor as a judge of the Supreme Court of Northern Ireland for the purposes of section 9(1)(d) of the 1973 Act (salaries etc.); 15
- 1971 c. 23.
1907 c. 51. (d) a Circuit judge is not to count as such for the purposes of section 18 of the Courts Act 1971 (salaries etc.);
- (e) a sheriff is not to count as such for the purposes of section 14 of the Sheriff Courts (Scotland) Act 1907 (salaries etc.); 20
- (f) a county court judge of Northern Ireland is not to count as such for the purposes of section 106 of the County Courts Act (Northern Ireland) 1959 (salaries etc.).

1971 c. 58. (5) If a sheriff principal is appointed a judge of the Court, section 11(1) of the Sheriff Courts (Scotland) Act 1971 (temporary appointment of sheriff principal) applies, while he holds that appointment, as if his office is vacant. 25

(6) The Lord Chancellor or the Secretary of State may by order—

- (a) make such provision with respect to pensions payable to or in respect of any holder of a judicial office who serves as a judge of the Court as he considers appropriate; 30
- (b) make such transitional provision (including, in particular, provision for a temporary increase in the maximum number of judges) as he considers appropriate in relation to any holder of a judicial office who has completed his service as a judge of the Court.

Parliamentary procedure

35

Statements of compatibility.

19.—(1) A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill—

- (a) make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (“a statement of compatibility”); or 40
- (b) make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.

(2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate. 45

Supplemental

20.—(1) Any power to make an order under this Act is exercisable by statutory instrument. Orders under this Act.

(2) Any such instrument made under section 14, 15 or 16 must be laid before Parliament.

(3) No order may be made under section 1(4) or 16(2) unless a draft of the order has been laid before, and approved by, each House of Parliament.

(4) Any statutory instrument made under section 18(5) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

10 21.—(1) In this Act— Interpretation, etc.

“the appropriate Minister” means the Minister of the Crown having charge of the appropriate authorised government department (within the meaning of the Crown Proceedings Act 1947); 1947 c. 44.

15 “the Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;

“the Commission” means the European Commission of Human Rights;

“declaration of incompatibility” means a declaration under section 4;

20 “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975; 1975 c. 26.

“primary legislation” means any—

(a) public general Act;

(b) local and personal Act;

25 (c) private Act;

(d) Measure of the Church Assembly;

(e) Measure of the General Synod of the Church of England;

(f) Order in Council made under section 38(1)(a) of the Northern Ireland Constitution Act 1973; 1973 c. 36.

30 (g) Order in Council made in exercise of Her Majesty’s Royal Prerogative;

and includes an order or other instrument made under primary legislation to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation;

35 “the First Protocol” means the protocol to the Convention agreed at Paris on 20th March 1952;

40 “11th Protocol” means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May 1994;

“remedial order” means an order under section 10;

“subordinate legislation” means any—

45 (a) Order in Council other than one made in exercise of Her Majesty’s Royal Prerogative or under section 38(1)(a) of the Northern Ireland Constitution Act 1973;

(b) Act of the Parliament of Northern Ireland;

(c) Measure of the Northern Ireland Assembly;

(d) order, rules, regulations, scheme, warrant, byelaw or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation); 5

(e) order, rules, regulations, scheme, warrant, byelaw or other instrument made under legislation mentioned in paragraphs (b) or (c) or made under an Order in Council applying only to Northern Ireland; 10

“tribunal” means any tribunal in which legal proceedings may be brought.

(2) The references in paragraphs (b) and (c) of section 2(1) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the 11th Protocol. 15

(3) The reference in paragraph (d) of section 2(1) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the 11th Protocol.

(4) The references in section 2(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the 11th Protocol (transitional provisions). 20

1973 c. 36.

(5) In section 4(3) of the Northern Ireland Constitution Act 1973 (status of Measures of Northern Ireland Assembly), after “below” insert—

“and to section 21(1) of the Human Rights Act 1998”. 25

Short title,
commencement,
application and
extent.

22.—(1) This Act may be cited as the Human Rights Act 1998.

(2) Sections 18 and 20 and this section come into force on the passing of this Act.

(3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes. 30

(4) Paragraph (b) of subsection (1) of section 7 applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise that subsection does not apply to an act committed before the coming into force of that section. 35

(5) This Act binds the Crown.

(6) This Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

THE ARTICLES

PART I

5

THE CONVENTION

RIGHTS AND FREEDOMS

Article 2

Right to life

10 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

15 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

20

Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4

25

Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.
- 2. No one shall be required to perform forced or compulsory labour.
- 3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
 - 30 (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - 35 (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

SCH. 1

Article 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: 5

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; 10
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; 15
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; 20
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. 25

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 30

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation. 35

Article 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. 40
Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 45

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- 5 (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- 10 (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

25 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

SCH. 1 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. 5

Article 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 10

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. 15

Article 12

20

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 14

Prohibition of discrimination

25

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 16

30

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17

Prohibition of abuse of rights

35

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18

40

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

PART II

SCH. 1

THE FIRST PROTOCOL

*Article 1**Protection of property*

5 Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a
10 State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

*Article 2**Right to education*

15 No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

*Article 3**Right to free elections*

20 The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

SCHEDULE 2

25 RESERVATION AND DEROGATION

PART I

DEROGATION

The 1988 notification

30 The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 5 November 1950.

35 There have been in the United Kingdom in recent years campaigns of organised terrorism connected with the affairs of Northern Ireland which have manifested themselves in activities which have included repeated murder, attempted murder, maiming, intimidation and violent civil disturbance and in bombing and fire raising which have resulted in death, injury and widespread destruction of property. As a
40 result, a public emergency within the meaning of Article 15(1) of the Convention exists in the United Kingdom.

The Government found it necessary in 1974 to introduce and since then, in cases concerning persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland, or of certain offences under the legislation,
45 who have been detained for 48 hours, to exercise powers enabling further detention without charge, for periods of up to five days, on the authority of the Secretary of State. These powers are at present to be found in Section 12 of the Prevention of

SCH. 2 Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984.

Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 provides for a person whom a constable has arrested on reasonable grounds of suspecting him to be guilty of an offence under Section 1, 9 or 10 of the Act, or to be or to have been involved in terrorism connected with the affairs of Northern Ireland, to be detained in right of the arrest for up to 48 hours and thereafter, where the Secretary of State extends the detention period, for up to a further five days. Section 12 substantially re-enacted Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1976 which, in turn, substantially re-enacted Section 7 of the Prevention of Terrorism (Temporary Provisions) Act 1974.

Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984 (SI 1984/417) and Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 (SI 1984/418) were both made under Sections 13 and 14 of and Schedule 3 to the 1984 Act and substantially re-enacted powers of detention in Orders made under the 1974 and 1976 Acts. A person who is being examined under Article 4 of either Order on his arrival in, or on seeking to leave, Northern Ireland or Great Britain for the purpose of determining whether he is or has been involved in terrorism connected with the affairs of Northern Ireland, or whether there are grounds for suspecting that he has committed an offence under Section 9 of the 1984 Act, may be detained under Article 4 or 10, as appropriate, pending the conclusion of his examination. The period of this examination may exceed 12 hours if an examining officer has reasonable grounds for suspecting him to be or to have been involved in acts of terrorism connected with the affairs of Northern Ireland.

Where such a person is detained under the said Article 9 or 10 he may be detained for up to 48 hours on the authority of an examining officer and thereafter, where the Secretary of State extends the detention period, for up to a further five days.

In its judgment of 29 November 1988 in the Case of *Brogan and Others*, the European Court of Human Rights held that there had been a violation of Article 5(3) in respect of each of the applicants, all of whom had been detained under Section 12 of the 1984 Act. The Court held that even the shortest of the four periods of detention concerned, namely four days and six hours, fell outside the constraints as to time permitted by the first part of Article 5(3). In addition, the Court held that there had been a violation of Article 5(3) in the case of each applicant. Following this judgment, the Secretary of State for the Home Department informed Parliament on 6 December 1988 that, against the background of the terrorist campaign, and the over-riding need to bring terrorists to justice, the Government did not believe that the maximum period of detention should be reduced. He informed Parliament that the Government were examining the matter with a view to responding to the judgment. On 22 December 1988, the Secretary of State further informed Parliament that it remained the Government's wish, if it could be achieved, to find a judicial process under which extended detention might be reviewed and where appropriate authorised by a judge or other judicial officer. But a further period of reflection and consultation was necessary before the Government could bring forward a firm and final view.

Since the judgment of 29 November as well as previously, the Government have found it necessary to continue to exercise, in relation to terrorism connected with the affairs of Northern Ireland, the powers described above enabling further detention without charge for periods of up to 5 days, on the authority of the Secretary of State, to the extent strictly required by the exigencies of the situation to enable necessary enquiries and investigations properly to be completed in order to decide whether criminal proceedings should be instituted. To the extent that the exercise of

these powers may be inconsistent with the obligations imposed by the Convention the Government has availed itself of the right of derogation conferred by Article 15(1) of the Convention and will continue to do so until further notice.

SCH. 2

Dated 23 December 1988.

5

The 1989 notification

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information.

10 In his communication to the Secretary General of 23 December 1988, reference was made to the introduction and exercise of certain powers under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984.

15 These provisions have been replaced by section 14 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989, which make comparable provision. They came into force on 22 March 1989. A copy of these provisions is enclosed.

20 The United Kingdom Permanent Representative avails himself of this opportunity to renew to the Secretary General the assurance of his highest consideration.

23 March 1989.

PART II

RESERVATION

25 At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.

30 Dated 20 March 1952. Made by the United Kingdom Permanent Representative to the Council of Europe.

Human Rights [H.L.]

A
BILL

INTITLED

An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.

The Lord Chancellor

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